

Restriction Requirement

The Examiner has entered a restriction requirement under 35 U.S.C. §121. This Response is in response to the Office Action mailed August 8, 2002, having a statutory period for response of one (1) month as provided in 35 U.S.C. § 133, a time set to expire on September 8, 2002.

Applicant respectfully requests reconsideration of the restriction for the reasons and analyses set forth in this Response. Specifically, Applicant requests examination of claims 1-9 and 10-23, Groups I and II, together.

Barring withdrawal of the restriction requirement, Applicant has elected to prosecute one of the Groups of claims, with traverse.

Remarks

On page 2 of the Office Action, the Examiner required Applicant under 35 U.S.C. §121 to restrict prosecution on the merits of the application to one of three Groups.

Applicant respectfully traverses the arguments of the Examiner entered in support of the restriction requirement.

The restriction contemplated by 35 U.S.C. §121 is permissive, not mandatory. The statute requires that "the Commissioner *may* require the application to be restricted to one of the inventions." See 35 U.S.C. §121. Further, 35 U.S.C. §121 requires that the two or more inventions be not merely "distinct," but both "*independent and distinct*." Applicant submits that Claims 1-9 of the Application are not independent of Claims 10-23. In addition, examination of Claims 1-9 and 10-23 will not impose an undue burden on the search or subsequent examination of the Application, given the close relationship between the sets of Claims. See MPEP §808.

Also, the Examiner asserts on page 2 of the Office Action that a basis for the restriction between the claims in Groups I and II are that the respective claims are to be classified in different classes and subclasses. Applicant has reviewed the current classification definitions, and encloses copies of those definitions with this Response. The Examiner asserts that claims 1-9 must be classified in class 248, whereas claims 10-23 must be classified in class 52. Applicant respectfully disagrees. The class definition for class 52 is sufficiently broad enough in scope to include claims 1-9 given the context of the application as a whole. Class 248, on the other hand, is not an appropriate classification for the present invention. Class 248 contemplates "devices which carry

the weight of an article...or otherwise hold or steady it or them against the pull of gravity...." Thus, as indicated in the definition for class 248, that class contemplates apparatus such as apparel hangers and lighting structures. See enclosed sheet containing the definition of class 248. Also, the Note to class 248 expressly states: "Devices having structural features limiting them to use in a particular art remain with the art." Applicant, therefore, submits for the Examiner's consideration that claims 1-9 and 10-23 may be included in a single class, despite subclasses.

Accordingly, Applicant requests reconsideration of the restriction concerning claims 1-9 and 10-23, and the inclusion of those claims in a single classification.

Applicant also submits that there is no proof that the Examiner's findings on pages 2-3 of the Office Action are correct. There is nothing of record, for example, that supports the proposition that the system of claims 1-9 can be used to make other and materially different product, or that the product as claimed in Claims 10-23 can be made by another and materially different process.

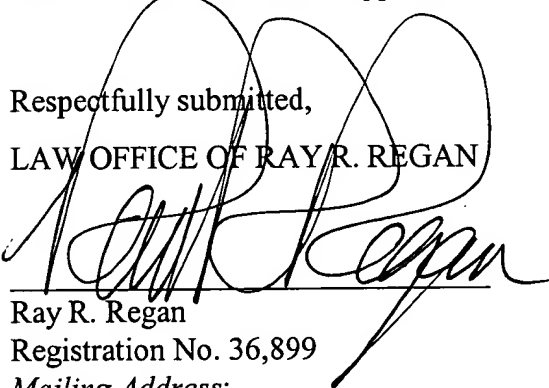
Conclusions and Election

For the reasons set forth above reconsideration and withdrawal of the restriction requirement is respectfully requested.

Barring withdrawal of the restriction requirement, Applicant elects to prosecute Claims 10-23 in Group II, with traverse.

The Examiner is requested to call the undersigned as (505) 897-7200 for any reason that would advance the instant application to issue.

Respectfully submitted,
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A CLASS
52, STATIC STRUCTURES (E.G., BUILDINGS)[Click here for a printable version of this file](#)**SECTION I - CLASS DEFINITION**

This is the residual class for static structures. It includes on site erected structures generally identified by terms such as: civil engineering, public works, shelter, housing, buildings or masts and other related components used in such structures, e.g., panels, beams, columns. etc. Also, included are selected structurally similar components, such as, table top panels, poles, posts, window sash elements or door panels even though not disclosed as specialized as components of a building structure. Also, are included processes, machines and implements used in the construction of such structures which are not elsewhere provided for.

SECTION II - SUBCLASS REFERENCES TO THE CURRENT CLASS

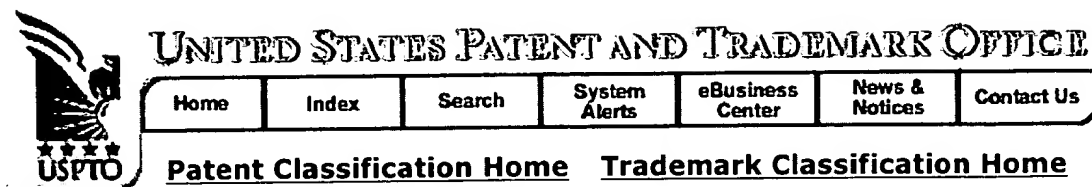
SEE OR SEARCH THIS CLASS, SUBCLASS:

- 27, see the (1) Note, for exemplary classes and subclasses that provide for an article or article support installed in means forming an enclosure or part thereof.
- 198, see the search class reference to Class 454 for a ventilating structure with air directing or controlling features other than mere windows.
- 204.1, for a structure having defined structure outlining a passageway which traverses a barrier (e.g., wall), said passageway is designed for a means which allows access of light, air, people, or a pet and see the attached search notes to this subclass definition.

SECTION III - REFERENCES TO OTHER CLASSES

SEE OR SEARCH CLASS:

- 14, Bridges, appropriate subclasses for nonmasonry or nonconcrete static structure specialized to carrying traffic across a space between supports.
- 34, Drying and Gas or Vapor Contact With Solids, appropriate subclasses, particularly subclasses 201+ for houses and kilns having means for drying and/or gas or vapor contact with solids, and subclass 237 for reticulated floors for distributing a drying medium.
- 47, Plant Husbandry, for buildings having features specialized to the care, treatment and support of the growth of plants.
- 49, Movable or Removable Closures, for closure panels mounted for movement or removal including support means for such closures having features providing for such movement or removal of a closure panel. This class (52) takes panels, per se, (1) even though defined



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You are viewing a Class definition.

CLASS SUPPORTS **248,**

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SECTION I - CLASS DEFINITION

This class provides for devices which carry the weight of an article or articles or otherwise hold or steady it or them against the pull of gravity, and devices for holding an article to its support, which are not otherwise provided for.

(1) Note. Devices having structural features limiting them to use in a particular art remain with the art.

SECTION II - LINES WITH OTHER CLASSES AND WITHIN THIS CLASS

LINE BETWEEN CLASS 248, AND CLASS 362, CLASS 313/39, AND CLASS 431

The line between this class and Classes 362, Illumination, 313, Electric Lamp and Discharge Devices, subclass 39, and 431, Combustion is as follows:

Class 223, Apparel Apparatus, subclass 120 for supports, bases and stands claimed in connection with means for making, repairing or maintaining in condition articles of apparel.

Class 362 takes any combination of a support with significant structure of the light distributing means or the combination of the light distributing and generating means.

Class 313, subclasses 49+ is the generic class for the combination of a support with significant structure of an electric space discharge device. See Lines With Other Classes, "Combined with a Support" of the class definition for the other classes which provide for the combination of a support and a discharge device.

The mere supporting structure goes to Class 248 and such supporting structure may include conduits for fuel or energy and mere cut-offs therefor. Supporting structures limited to use with lighting devices are in Class 362. Supports for a light generating device are in Class 248 unless a significant structure of the light generator is claimed, in which case it goes to Class 431 or Class 362.

The mere naming of a light or discharge device as the thing supported will not operate to take the case out of Class 248. If the support is in itself an essential part of the lamp or discharge device such as are many lamp bases, it remains in the art class. In Class 313, class definition, see the following sections of Lines With Other Classes: "Combined with Electrical Connector Structure,...(3)